

January 28, 2003

The Honorable Orrin G. Hatch
Chairman, Senate Judiciary Committee
Dirksen Senate Office Building
Room 224
Washington, DC 20510



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Dear Senator Hatch,

I am writing to urge you to vote against Jeffrey Sutton, who has been nominated for a position on the Sixth Circuit Courts of Appeals. Sutton already has played an important role in changing our laws. He has devoted much of his legal career to reducing the power of Congress to protect our civil rights against infringement by the states, and to preventing individual victims of discrimination from using the federal courts to vindicate their rights. Sutton has played an active role in recent Supreme Court opinions restricting the rights of women, the disabled, the elderly, the poor, and ethnic minorities, and in reducing the effectiveness of federal laws in general.

Mr. Sutton is more than a successful lawyer advocating for his clients. An ardent supporter of states' rights who is more "pro state" than most states, Sutton sees the relationship between the federal government and the states as a battle, a "zero sum game" in which only one side can win. Sutton's "zero sum" theory contrasts sharply with a cooperative vision of federalism - in which states and the federal government work together to protect our rights - that is held by many state officials.

Moreover, rather than simply represent the interests of his clients, Sutton has sought out cases in which to make arguments in favor of states rights that are far more extreme than those accepted by the Supreme Court. For example, Sutton has argued that Congress cannot use its power to enforce the Fourteenth Amendment's guarantee of equality to protect anyone who does not belong to a racial minority. Sutton also has argued that federal statutes and regulations based on Congress' spending power, including a vast range of federal laws from unemployment compensation to the Clean Air Act, are merely a contract and do not have the force of federal law.

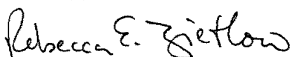
If Sutton had his way, Congress would be virtually powerless to prevent states from denying us our civil rights and civil liberties. Sutton is not worried about obliterating this federal protection, because he thinks that states alone will play an adequate role in protecting our rights. Unfortunately, one need only look to the sad history of state mandated segregation in many of our southern states to question Sutton's

assumption. For almost 150 years, protecting our civil rights has been one of the most important roles of the federal government.

It is particularly ironic that Sutton comes from Ohio, the home state of one of the most important advocates for federal protection of civil rights in our history, John Bingham, the author of Section 1 of the Fourteenth Amendment. Bingham envisioned the federal government as the protector of the fundamental rights of its citizens, and his vision is embodied in the Fourteenth Amendment. Jeff Sutton has devoted his legal career to obstructing Congress' attempts to realize Bingham's vision.

Sutton's vision of federalism goes well beyond disabling federal protection of civil rights. If he could, Sutton would insulate states from suit for violating virtually any federal law, from Medicaid regulations and environmental statutes to regulations governing the safety of federal highways. Sutton's vision would undermine both the supremacy of federal law and the bedrock legal principle, enunciated by the Supreme Court 200 years ago, that "for every right there is a remedy." A person with such anachronistic and dangerous views of our system of government does not belong on the federal bench. Please vote against his nomination.

Sincerely yours,



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